

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

XCENTRIC VENTURES, LLC,

No. C 10-80058 SI

Plaintiff,

v.

ELIZABETH ARDEN D/B/A  
COMPLAINTSBOARD.COM, et al.,

Defendant.

**ORDER GRANTING WRIT OF  
EXECUTION; GRANTING MOTION  
FOR LEAVE TO FILE A SURREPLY  
AND REQUEST FOR JUDICIAL  
NOTICE; AND ORDERING OPTIONAL  
SUPPLEMENTAL BRIEFING ON THE  
QUESTION OF COSTS**

On September 17, 2010, the Court heard argument on plaintiff's motion for a writ of execution. Having considered the arguments of counsel and the papers submitted, the Court hereby GRANTS plaintiff's motion. The Court GRANTS defendant's motion for leave to file a surreply and request for judicial notice. The Court also orders optional, supplemental briefing on the question of costs. At such time as the Court resolves the question of costs, the clerk is authorized to issue a writ of execution in any and all names of the judgment debtor as attested to in the affidavit of identity.

**BACKGROUND**

Plaintiff Xcentric Ventures, LLC, an Arizona limited liability company, operates a consumer complaint and free speech web forum located at [www.RipoffReport.com](http://www.RipoffReport.com) ("Rip-off Report"). Rip-off Report is alleged to be widely used by the public and works in concert with government agencies, attorneys general, and other federal, state and local law enforcement agencies to help report, identify and prevent consumer fraud. Compl. ¶ 6. Defendant ComplaintsBoard.com ("ComplaintsBoard" or "Defendant") is a corporation of unsubstantiated origin, allegedly based in Latvia, and is Xcentric

1 Ventures' competitor.<sup>1</sup> Defendant operates www.complaintsboard.com, which allegedly performs a  
2 function substantially similar to that of plaintiff's website. *See* Compl. ¶¶ 20-22.

3 In December 2008, Xcentric filed a lawsuit against ComplaintsBoard in the U.S. District Court  
4 for the District of Arizona. The complaint alleged that since at least November 2008, defendant had  
5 copied, and continued to copy, plaintiff's registered trademark "RIP-OFF REPORT" as well as large  
6 quantities of copyrighted material from Rip-off Report without plaintiff's permission or consent.  
7 Compl. ¶¶ 23-24. Plaintiff claimed that defendant's alleged unlawful use of plaintiff's trademarks and  
8 copyrighted materials caused substantial confusion among consumers "who have been misled into  
9 believing that Plaintiff is the owner and/or operator" of the ComplaintsBoard website. Compl. ¶ 25.

10 In October 2009, the District of Arizona entered default judgment in favor of plaintiff, awarding  
11 plaintiff \$60,000 in monetary damages as well as injunctive relief and attorney's fees. In March 2010,  
12 plaintiff registered the default judgment in the Northern District of California. Defendant filed a motion  
13 to vacate the default judgment issued by the District of Arizona for lack of personal jurisdiction in May  
14 2010, which the Court denied. In August, plaintiff filed a memorandum of costs, claiming an additional  
15 \$77,608 in attorneys fees and investigation fees incurred while attempting to execute the judgment.  
16 The memorandum included a description of the costs claimed and stated their amount. Plaintiff's  
17 attorney signed the memorandum under penalty of perjury, attesting that the costs claimed were correct,  
18 reasonable, necessary, and had not been satisfied. Plaintiff also filed an affidavit of identity intended  
19 to show that www.complaintsboard.com belongs to defendant, even though it is currently registered to  
20 an entity that is not named in the underlying judgment. Although the underlying judgement is against  
21 Elizabeth Arden d/b/a Complaintsboard.com only, plaintiff states that the judgment debtor is known as  
22 Complaintsboard.com, Sergey Kudrjavcev, March Shultz (also spelled Mark Schultz), and Business  
23 Networks Ltd. as well.

24 Currently before the court is plaintiff's motion for a writ of execution, which was filed  
25 simultaneously with the memorandum of costs and affidavit of identity. Also before the Court are  
26 defendant's motion for leave to file a request for judicial notice and a surreply, as well as a request by  
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28 <sup>1</sup> The domain name was registered to an "Elizabeth Arden" at some point, though it is unclear whether or not this a real person.

1 defendant to strike plaintiff's memorandum of costs.

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### 3 **LEGAL STANDARD**

#### 4 **1. Writ of Execution**

5 The execution of money judgments should accord with the procedures of the state where the  
6 court is located. Fed. R. Civ. P. 69(a)(1). Section 699.510 of the California Code of Civil Procedure  
7 sets the parameters for the issuance of writs of execution in the State of California. A clerk of court may  
8 issue a writ of execution. Cal. Civ. Pro. § 699.510(a). If the judgement creditor believes that a  
9 judgment debtor is known by any names that are not listed in the judgment, then it must submit an  
10 affidavit of identity before those names can be included on the writ of execution. If the court determines  
11 that the affidavit of identity states sufficient facts identifying additional names of the judgment debtor,  
12 the court is to authorize the issuance of the writ of execution with those names. The clerk may then  
13 issue a writ that includes those additional names. *Id.* § 699.510(c)(1); *see also id.* at § 680.135 (defining  
14 affidavit of identity).

15 Under California law, a domain name is intangible property subject to a writ of execution.  
16 *Office Depot Inc. v. Zuccarini*, 596 F.3d 696, 701–02. (9th Cir. 2010); *see also* Cal. Civ. Pro. §  
17 695.010(a). A writ of execution provides authority for a levy to be made in the county where the writ  
18 is issued. Cal. Civ. Pro. § 699.510(a). California law does not require a judgment creditor to show that  
19 the judgment debtor owns property within a court's jurisdiction before that court issues a writ of  
20 execution, though practically speaking the judgment creditor may have difficulty levying property  
21 located elsewhere.

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#### 23 **2. Costs to Enforce the Judgment**

24 In California, a judgment creditor may claim certain costs associated with the enforcement of  
25 a judgment. Some of those costs are authorized as of right, while others may be granted on a  
26 discretionary basis. Cal. Prac. Guide Enf. J. & Debt Ch. 6A-5(c)(2). Costs available as of right are  
27 listed in Section 685.070(a) of the California Code of Civil Procedure, and a judgment creditor may  
28 claim them by filing a memorandum of costs. *Id.* Courts are also authorized to award other “reasonable

1 and necessary costs," though a judgment creditor must file a noticed motion to request them. *Id.*; see  
2 also Cal. Civ. Pro. §§ 685.040, 685.080. Both a memorandum of costs and a motion to claim costs must  
3 be accompanied by an attestation that the costs are correct, reasonable, necessary, and have not been  
4 satisfied. Cal. Civ. Pro. §§ 685.070, 685.080.

5 If a judgment creditor files a memorandum of costs pursuant to Section 685.070, the judgment  
6 debtor has 10 days after being served with a memorandum of costs to object by filing a noticed motion  
7 to have the costs taxed by the court. *Id.* § 685.070(c). Where service is mailed from an address outside  
8 California to an address inside California, the judgment debtor has an additional 10 days to object. *Id.*  
9 §§ 685.070(f), 1013(a). If the judgment debtor fails to file such a motion in time, the costs claimed in  
10 the memorandum are allowed. *Id.* § 685.070(d). If the judgment debtor files a timely motion, or if the  
11 judgment creditor files a motion for costs rather than a memorandum, the court is directed to "make an  
12 order allowing or disallowing the costs to the extent justified under the circumstances of the case." *Id.*  
13 §§ 685.070(c), 685.080(c).

14 The judgement creditor is entitled to attorney's fees incurred while enforcing a judgment, as long  
15 as those fees are permitted by statute or contract. *Id.* § 685.040. Those attorney's fees are available as  
16 of right, and may be claimed either by motion or memorandum. *See id.* §§ 685.070, 685.080. The  
17 Copyright Act authorizes a court to "award a reasonable attorney's fee to the prevailing party" in a  
18 copyright action "as part of the costs." 17 U.S.C. § 505.

19 Investigative fees are not available as of right, though a court may award them where they are  
20 justified. Cal. Civ. Pro. § 685.080.

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## 22 DISCUSSION

### 23 1. Writ of Execution

24 Unable to collect on the judgment to date, plaintiff has filed this motion for a writ of execution  
25 so that it can levy upon the domain name www.complaintsboard.com. Defendant argues that the Court  
26 does not have authority to issue the writ of execution, because the domain name is actually located in  
27 Dulles, Virginia. Defendant has not challenged plaintiff's affidavit of identity.

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1       As explained above, the location of the domain name is immaterial at this time.<sup>2</sup> What is  
2 important is that plaintiff has filed a proper affidavit of identity, which the Court has determined states  
3 sufficient facts to permit a writ of execution to be issued with the names Complaintsboard.com, Sergey  
4 Kudrjavcev, March Shultz (also spelled Mark Schultz), and Business Networks Ltd. The Court  
5 authorizes the clerk to issue a writ of execution after the Court has resolved the cost issue, as discussed  
6 below.

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8       **2. Costs to enforce the judgment**

9       It appears that plaintiff has incurred significant costs while attempting to collect on the  
10 underlying judgment. Defendant argues that plaintiff is not entitled to those costs on two grounds. First,  
11 defendant argues that plaintiff is not entitled to any attorney's fees. Second, defendant argues that  
12 plaintiff should have filed a motion to claim the investigative fees rather than a memorandum of costs.  
13 Plaintiff responds that the Copyright Act entitles it to attorney's fees, and that defendant should have  
14 filed a motion objecting to the memorandum rather than merely stating its objections in its papers  
15 opposing plaintiff's motion for a writ of execution. Defendant asks the court to overlook the form of  
16 its objection, noting that it was timely stated.

17       The California Code of Civil Procedure and the U.S. Copyright Act clearly entitle plaintiff to  
18 collect the attorney's fees it has incurred while attempting to collect the judgment. Those costs are  
19 allowed.

20       More complicated is the question of investigative fees. Plaintiff cites Section 685.040 of the  
21 California Code of Civil Procedure as providing statutory authority for the award. But as defendant  
22 points out, unless plaintiff can claim the investigative costs as of right, it is required to request them in  
23 a noticed motion. As plaintiff has noted, however, defendant was required to object to the memorandum  
24 of costs in a noticed motion as well, rather than in the opposition papers it filed in response to plaintiff's  
25 motion for a writ of execution.

26       Essentially, each party argues that it is in the right because the other party failed to file the proper

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28       <sup>2</sup>       Therefore, there is not need for the Court to consider defendant's request for judicial  
notice.

1 motion. However, the Court construes the parties' filings as properly noticed motions. Plaintiff's  
2 memorandum was filed simultaneously with its noticed motion for a writ of execution, and contained  
3 all of the essential elements of a motion to claim costs. Similarly, defendant's request to strike was  
4 timely filed as part of its opposition to plaintiff's noticed motion.

5 The Court will therefore rule on the motion for costs, in light of the objections. Given the  
6 eccentric procedural posture of this question, however, plaintiff has not yet provided the Court with any  
7 information explaining the costs: what was done, by whom, how much it cost and why it was necessary.  
8 In turn, defendant has not made any substantive objection to the specific costs claimed. If the parties  
9 wish to provide this information to inform the Court's decision on this question, they may do so on the  
10 following schedule: Plaintiff may file any additional documentation that it wishes to submit in support  
11 of its motion for investigative costs by October 8, 2010. Defendant may file an opposition to the motion  
12 by October 15, 2010. The Court will take the motion under submission without argument. After the  
13 Court rules on the motion to claim costs, the clerk will be authorized to issue the writ of execution.

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15 **IT IS SO ORDERED.**

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17 Dated: October 1, 2010

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SUSAN ILLSTON  
United States District Judge

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